

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

ATOMP004

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on \_\_\_\_\_

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Typed or printed name \_\_\_\_\_

Application Number

10773755

Filed

Feb. 6, 2004

First Named Inventor

Brian Y. Lim

Art Unit

1731

Examiner

R. J. Kemmerle III

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Melvin D. Chan/

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

Signature

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Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below.

☐ \*Total of \_\_\_\_\_ forms are submitted.

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## United States Patent and Trademark Office

Application No.: 10/773,755  
Confirmation No.: 4021  
Customer No.: 51111  
Docket No.: ATOMP004

Commissioner for Patents  
POB 1450  
Alexandria, VA 22313-1450

### Reasons for Pre–Appeal Brief Review Request

Dear Commissioner:

Applicants request a pre–appeal brief conference review because the rejections of record are clearly based on legal and factual error.

#### Claims 21–25 and 31

The examiner’s section 103 rejection of claims 21–25 and 31 is improper as discussed on page 8 of the June 27, 2007 response: Beshoory does not show or suggest a housing where “*input fluid enters the interior chamber only through at least one of the first or third opening,*” as recited in claim 21. Rather, Beshoory has at least three openings (i.e., gas inlet 43, apertures 33, or gas outlet 44) through which a fluid (such as a gas) may be input to (or output from) tube 40. Beshoory, column 2, lines 10, 43–44, and 56–60.

In the final office action, the examiner states:

While Beshoory discloses additional openings in the tube (apertures 33), they are needed only for flowing a purging gas through the tube in situations where a volatile gas is used or created during the heat treatment (Col 2 lines 56-66). Thus it would have been obvious to one of ordinary skill in the art, at the time of invention by applicant, that when such a purge was not necessary that the fluid only enter the interior chamber through the fluid inlet 43.

The examiner’s statement regarding apertures 33 is not correct. Apertures 33 in Beshoory are not optional, but required. The subject of Beshoory is a thermobalance. Column 1, lines 65–68; column 2, lines 1–5. To perform gravimetric measurements, the thermobalance has a sample beam 71 and pan 72. Column 2, lines 32–35. The sample beam extends through an aperture 33.

*Id.* This aperture 33 cannot be omitted or else it would not be possible for the sample beam to extend into outer tube 40. Without aperture 33, the entire purpose of Beshoory would be ruined.

So, aperture 33 is required and allows gas to enter tube 40 since there is nothing (e.g., a valve) to prevent this from happening. Clearly, Beshoory is different from what is claimed.

For at least this reason, claim 21 should be allowable. Furthermore, claims 22–25 and 31 are dependent on claim 21 and allowable over the cited reference for at least similar reasons.

### **Claim 31**

Additionally, claim 31 recites “wherein *said second end of said housing comprises no openings*.” In the final office action, the examiner states:

Referring to claim 31, Beshoory does not disclose where the second end of said housing comprises no openings. However, the openings on the second end of the housing disclosed by Beshoory (apertures 33), as discussed above, are required only for an optional purge step when an inert gas is required to remove volatiles from the housing. When such a step is not required, it would be obvious to one skilled in the art that such openings would not be needed on the second end of the housing, and thus it would be obvious to create a housing having no openings on the second side.

For the reasons given above for claim 21, the examiner is not correct. Apertures 33 are not optional, and claim 31 is allowable.

Further, even if one were to disregard apertures 33, the end of outer tube 40 with annular lip 41 has an opening. This opening allows insertion of sample beam 71 into the outer tube. The end of outer tube 40 is secured through a nut assembly 60 and O-ring 65 to an inner tube 30. Column 2, lines 16–29. For at least this additional reason, claim 31 should be allowable.

Applicants believe all pending claims are allowable.

Respectfully submitted,

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